IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.41308-M of 2006

DATE OF DECISION: FEBRUARY 7, 2007

Des Raj

...PETITIONER

VERSUS

Sita Devi

...RESPONDENT

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr.H.N. Mehtani, Advocate,
for the petitioner.
Mr.Arun Palli, Advocate,
for the respondent.

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Des Raj, ex-husband of respondent Sita Devi, has filed this petition under Section 482 Cr.P.C. for setting aside the order dated 8.10.2005 passed by the Addl.Chief Judicial Magistrate, Sangrur as well as the order dated 8.5.2006 passed by the Addl.Sessions Judge (Adhoc), Fast Track Court, Sangrur, whereby an amount of maintenance of Rs.2000/- per month has been awarded to the respondent-wife under Section 125 Cr.P.C.

2. The brief facts of the case are that in this case the parties got married in the year 1955. A son was born to them on 15.8.1958. In the year 1970, a petition for dissolution of the marriage was allegedly filed by respondent Sita Devi against the petitioner on the ground that her husband converted himself to Christianity, therefore, the marriage be dissolved. In the said petition, the petitioner filed the admitted written statement and a decree for divorce was passed. In those proceedings, an application for

permanent alimony and maintenance was filed. During the pendency of the said application, a compromise was alleged to have been arrived at between the parties out of the court, according to which, the petitioner had paid a sum of Rs.10,000/- in lump sum as maintenance and also provided a house for her residence. It is also alleged that another amount of Rs.5000/- was also given to the wife at that time. In view of the said agreement, the application for alimony and maintenance was not pressed.

3. In the year 2001, when the respondent-wife was 62 years old and not able to maintain herself and when her husband as well as her son neglected her to maintain, she filed an application under Section 125 Cr.P.C. against the petitioner on 19.10.2001. In the application, it was alleged that initially there were cordial relations between the parties. After sometime, the petitioner started residing with one lady claiming her to be his second wife. Thereafter, the petitioner maltreated the respondent-wife and turned her out of the matrimonial home along with her minor child. It was alleged that the respondent is an illiterate lady and during her stay with her husband, he obtained her signatures on blank papers and those were misused by him in obtaining the alleged consent decree of divorce. It has been stated that thereafter the petitioner started providing food to the respondent-wife in a separate house till her son became major. Thereafter, the petitioner paid some amount and meals for sometime but later on he refused to maintain the respondent. It was alleged that from the last about five years, the petitioner had completely stopped maintaining the respondent-wife. She is not in a position to maintain herself being an old lady and having no source of income. It was alleged that the petitioner is running the business under the name and style of Janta Medical Hall, Main Bazar, Bhawanigarh and a shop

of Commission Agent and having sufficient movable and immovable property worth lacs of rupees. It was alleged that the petitioner was having an income of Rs.one lac per month. On these facts, she claimed that an amount of Rs.10,000/- per month be awarded to her against her husband for maintenance.

4. The aforesaid application was contested by the petitioner on several grounds, i.e., that in view of the dissolution of the marriage between the parties and the permanent alimony paid to the respondent-wife, the application under Section 125 Cr.P.C. is not maintainable; that wife could have claimed maintenance from her major son; that the husband being an old person, is not capable to maintain the respondent-wife as he is having no source of income.

5. The learned Additional Chief Judicial Magistrate, Sangrur after taking into consideration the evidence/material placed on record by both the parties, had come to the conclusion that being an ex-husband, the petitioner is liable to maintain the respondent-wife and by making a payment of Rs.15000/- in the year 1971, he could not absolve himself from maintaining the respondent-wife when she is unable to maintain herself. It was also found that the petitioner was running a shop and having movable and immovable property. Keeping in view all these facts, an amount of Rs.2000/- per month was awarded as maintenance to the respondent wife from the date of application.

6. The aforesaid order was confirmed in revision filed by the petitioner before the Additional Sessions Judge (Adhoc), Fast Track Court, Sangrur. Hence this petition.

7. Counsel for the petitioner raised four submissions in this case.

Firstly that after 31 years of the divorce obtained by the wife herself, she cannot claim maintenance under Section 125 Cr.P.C.; secondly, she can claim maintenance from her major son instead the ex-husband; thirdly, that the petitioner is an old man and has no source of income to pay the amount of maintenance; and fourthly the assessment of Rs.2000/- per month as maintenance, is arbitrary and without and basis.

8. After hearing the arguments of the learned counsel for the parties, I do not find any substance in either of the contentions raised by the counsel for the petitioner, and no interference in the impugned order in exercise of the inherent powers of this Court under Section 482 Cr.P.C. is required. In this case, the marriage between the parties took place in the year 1955. As per the documents available on the record, a petition for dissolution of the marriage was filed by the respondent wife in the year 1970 on the ground that the husband had converted to Christianity, therefore, the marriage be dissolved. The husband admitted the allegations and a decree for divorce was passed. The respondent wife alleged that after sometime of the marriage, the husband kept another lady as second wife and thereafter started maltreating her and thrown her out of the matrimonial home along with her minor son. Though a petition under Section 25 of the Hindu Maintenance Act for permanent alimony and maintenance was filed, but an agreement was alleged to have been entered, according to which, an amount of Rs.15,000/- was paid to the wife and she was also provided an accommodation to live with her minor son. In her application for maintenance under Section 125 Cr.P.C., she admitted that she was provided a house and initially some amount was also paid to her. Thereafter, the petitioner continued to pay some amount and meals to her for some time. It

was alleged that now for the last about five years, the petitioner had completely stopped maintaining the respondent-wife.

9. Undisputedly, the respondent wife is an old illiterate and rustic woman. She is suffering from old age ailment. As per the findings recorded by both the Courts below, she has no source of income and is unable to maintain herself. Though under the law, she can claim the maintenance from her son, but she has a prior right to claim the maintenance from her husband/ex-husband under Section 125 Cr.P.C.

10. During the course of hearing, counsel for the petitioner does not dispute the legal position that under Section 125 Cr.P.C. a wife can claim maintenance from her ex-husband, if she has no source of income and is unable to maintain herself. However, counsel for the petitioner raised the contention that once the wife started living separately after the divorce and has also accepted the amount of maintenance and alimony in the year 1971, she is not entitled to claim maintenance after 30 years of the dissolution of the marriage. In support of his contention, counsel for the petitioner relied upon a decision of the Bombay High Court in Vitthal Hiraji Jadhav v. Harnabai Vitthal Jadhav and another, 2003(4) RCR (Crl.) 790 and a decision of the Madras High Court in J.Sampathkumar v. Subashini, 1986 Cri.L.J. 1633. I do not find any substance in this contention of the counsel for the petitioner. The respondent-wife herself has admitted that initially some payment was made by the petitioner-husband in the year 1971 to her when he started living with a second lady. Subsequently, he also used to provide food to the respondent-wife in a separate house till her son became major. But for the last five years from filing the application, he stopped providing any maintenance to her. Merely because an amount of Rs15000/-

was paid in the year 1971, it cannot be inferred that for all the times the wife could not claim maintenance from the husband in spite of the proved fact that she was having no source of income and not able to maintain herself.

11. Grant of maintenance under Section 125 Cr.P.C. is a measure of social justice and specially enacted to protect women and children who are not able to maintain themselves. This statutory right of wife to be maintained by her husband/ex-husband when she is not capable to maintain herself, cannot be taken away by pressing into service any agreement between them which nullifies the said right. In a Division Bench decision of this Court in Ranjit Kaur v. Pavittar Singh, 1991(3) Recent Criminal Reports 212, a question came up for consideration "whether a wife who has voluntarily surrendered her right to maintenance in divorce proceedings, would not be entitled to claim subsequently maintenance allowance under Section 125 of the Code of Criminal Procedure". The said question was answered by the Division Bench against the husband and it was held that such an agreement in addition to its being opposed to public policy would not debar the wife from claiming maintenance under Section 125 Cr.P.C. if she is found to be unable to maintain herself.

12. In Bai Tahira v. Ali Hussain Fissalli Chothia and another, AIR 1979 SC 362, the Supreme Court has observed that payment of lump sum amount by the husband under any customary or personal law to the divorced wife, will not absolve the husband from his obligation under Section 125 Cr.P.C. towards a divorced wife except on proof of payment of a sum which is more or less sufficient to do duty for maintenance allowance. It was further observed that the payment of illusory amount as alimony at the time of divorce, will be considered in the reduction of maintenance rate but

cannot annihilate that rate unless it is a reasonable substitute. It was also observed that the whole scheme of Section 127(3)(b) is manifestly to recognise the substitute maintenance arrangement by lump sum payment organised by the custom of the community or the personal law of the parties. There must be a rational relation between the sum so paid and its potential as provision for maintenance.

13. In this case, on a petition for dissolution of the marriage allegedly filed by the respondent wife, a decree for divorce was passed. In those proceedings, an application for permanent alimony and maintenance was also filed. During the pendency of the said application, a compromise was allegedly arrived at between the parties in the year 1971, according to which, an amount of Rs.15,000/- was paid by the petitioner to the respondent wife. In my opinion, the illusory amount of Rs.15,000/- cannot be said to be substitute of maintenance for all the times and will not absolve the ex-husband to pay maintenance to the wife, if she is having no source of income and is unable to maintain herself. In this case, a positive finding has been recorded by the Courts below that at present the respondent-wife is not in a position to maintain herself as she is having no source of income.

14. Another contention raised by the counsel for the petitioner that the petitioner has no source of income, is also having no force. It has come in evidence that the husband is the Proprietor of Janta Medical Hall, Main Bazar, Bhawanigarh. He is also having movable and immovable property. The evidence to that effect has also come on record. Counsel for the petitioner contends that merely because the petitioner is Proprietor of a Medical Store, it cannot be presumed that he has sufficient income to pay the amount of maintenance of Rs.2000/- to the respondent-wife. Counsel

contends that the respondent wife did not lead any evidence to establish the income of the petitioner. This contention of the petitioner is not acceptable. In reply to the application under Section 125 Cr.P.C., the petitioner has admitted that he is the Proprietor of Janta Medical Hall, Main Bazar, Bhawanigarh. He alleged that his income is small. He has not disclosed his exact income. During the course of arguments, it has been asked from the counsel for the petitioner whether the firm M/s Janta Medical Hall, Main Bazar, Bhawanigarh is an income tax assessee and whether the petitioner is an income tax payee, but he could not give satisfactory answer. For the last many years, the petitioner is running the Medical Hall, which is situated in Main Bazar, Bhawanigarh. From these facts, it cannot be said that the petitioner is having no source of income to pay the amount of maintenance.

15. In the last, counsel for the petitioner argued that the amount of Rs.2000/- per month as maintenance is an arbitrary and excessive. I do not find any force in this contention of the counsel for the petitioner. The respondent-wife is an old illiterate lady suffering from old age ailment. Keeping in view the prices of the essential commodities in these days and the cost of medicines, the amount of maintenance of Rs.2000/- per month awarded to the respondent cannot be said to be excessive or arbitrary.

16. In view of the above, I do not find any ground to interfere in the impugned orders passed by both the Courts below in exercise of the inherent powers of this Court under Section 482 Cr.P.C.

17. Dismissed.

18. The amount of Rs.40,000/- deposited by the petitioner with the Registry of this Court in compliance with the order dated July 18, 2006 passed by this Court, is directed to be remitted to the trial court forthwith for

payment to the respondent wife.

February 7, 2007 (SATISH KUMAR MITTAL)
vkg JUDGE